

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

May 10, 2011

In the Matter of M. LIGHTFOOT, Minor.

No. 301267
Wayne Circuit Court
Family Division
LC No. 94-321550

Before: WILDER, P.J., and WHITBECK and FORT HOOD, JJ.

PER CURIAM.

Respondent mother L. Washington appeals as of right the termination of her parental rights to her minor child, M. Lightfoot, under MCL 712A.19b(3)(b)(i),¹ (g),² (j),³ (k)(iii),⁴ and (l).⁵ We affirm.

¹ MCL 712A.19b(3)(b)(i) states that “[t]he court may terminate a parent’s parental rights to a child if the court finds, by clear and convincing evidence” that “[t]he parent’s act caused the physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent’s home.”

² MCL 712A.19b(3)(g) states that “[t]he court may terminate a parent’s parental rights to a child if the court finds, by clear and convincing evidence” that “[t]he parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child’s age.”

³ MCL 712A.19b(3)(j) states that “[t]he court may terminate a parent’s parental rights to a child if the court finds, by clear and convincing evidence” that “[t]here is a reasonable likelihood, based on the conduct or capacity of the child’s parent, that the child will be harmed if he or she is returned to the home of the parent.”

⁴ MCL 712A.19b(3)(k)(iii) states that “[t]he court may terminate a parent’s parental rights to a child if the court finds, by clear and convincing evidence” that “[t]he parent abused the child or a sibling of the child and the abuse included . . . [b]attering, torture, or other severe physical abuse.”

I. FACTS

In November 1994, the Department of Human Services (DHS) petitioned for temporary custody of D. Washington, then two years old, alleging that (1) the police were called by neighbors reporting that L. Washington was always beating D. Washington, (2) the police found D. Washington with multiple scars and scrapes under his left eye and a swollen lip, (3) L. Washington said that he fell down the stairs the day before, (4) the injuries did not appear to be caused by a fall down the stairs, and (5) a doctor agreed that D. Washington was abused. D. Washington was placed in foster care. D. Washington was returned to L. Washington's custody sometime in April 1996 after L. Washington complied with her treatment plan, including completing parenting classes and counseling. The wardship was dismissed in July 1996.

In March 2001, DHS filed another petition for temporary custody of D. Washington, then eight years old, alleging that (1) L. Washington became angry with D. Washington for failing to pick up a pile of dirty clothes, grabbed him by the neck and began choking him, and also struck D. Washington on the right eye with a snow brush; (2) D. Washington had a swollen right eye, a small laceration over his right eye, and numerous scratches and loop shaped marks on his neck; (3) D. Washington told a protective services worker that he had been getting "whapped" with an extension cord for a long time; and (4) the protective services worker observed numerous loop shaped marks both old and new on his back and right leg. D. Washington was placed in foster care.

In January 2003, a few months after M. Lightfoot's birth, D. Washington was returned to L. Washington's custody after she complied with the treatment plan. The wardship of D. Washington was dismissed in April 2003.

However, a few weeks later, in May 2003, DHS petitioned for temporary custody of both D. Washington, then ten years old, and M. Lightfoot, then seven months old, alleging that (1) L. Washington struck D. Washington several times with a belt, (2) L. Washington received family reunification services in the past and was still receiving counseling, and (3) L. Washington's abuse of D. Washington put M. Lightfoot at risk. D. Washington was placed in foster care and M. Lightfoot was placed with her paternal grandmother. L. Washington wanted to be reunified with M. Lightfoot but was unsure about D. Washington.

L. Washington was convicted of third-degree child abuse on D. Washington and sentenced to three years' probation with the first six months to be served in jail.

In March 2005, L. Washington's parental rights to D. Washington were terminated. But in August 2005, the trial court returned M. Lightfoot, then two and one-half years old, to L. Washington's custody.

⁵ MCL 712A.19b(3)(l) states that "[t]he court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence" that "[t]he parent's rights to another child were terminated as a result of proceedings under section 2(b) of this chapter or a similar law of another state."

In October 2009, DHS filed an initial petition to terminate L. Washington's parental rights to M. Lightfoot, alleging that (1) M. Lightfoot was removed from L. Washington's custody in July 2009 and placed with her father because L. Washington was to be incarcerated the next day;⁶ (2) M. Lightfoot's father, G. Lightfoot, took M. Lightfoot to Children's Hospital for an examination, which showed a number of old scars and several new bruises and scars well into the healing stages; (3) a forensic interview of M. Lightfoot was performed and Children's Protective Services (CPS) concluded that M. Lightfoot was a victim of abuse by L. Washington; and (4) CPS observed multiple marks and bruises on M. Lightfoot's arms, lip, forehead, and legs.

In July 2010, a bench trial was held on the petition to terminate L. Washington's parental rights to M. Lightfoot. The trial court admitted into evidence judgments showing that L. Washington was convicted by guilty plea of third-degree child abuse in July 2002, and August 2003. Cerra Eddington, a CPS investigator, testified that she received a referral in this matter in July 2009. At that time, M. Lightfoot was living with G. Lightfoot, and L. Washington was incarcerated. Eddington forensically interviewed M. Lightfoot, and M. Lightfoot disclosed how she received her scars. M. Lightfoot had a scar on her left thigh, scars on top of her forehead, a scratch and a horseshoe-shaped bruise on her right thigh, and several bruises and scratches on her back. M. Lightfoot said that she got the scar on her head when L. Washington hit her with a hair dryer and the scars on her back were from "whuppings." L. Washington hit M. Lightfoot with a brush and with the buckle end of a belt, not just the strap. Some of M. Lightfoot's scars looked like a U-shape or square-shape buckle. M. Lightfoot said that L. Washington bit the lower, left side of her lip. M. Lightfoot said that L. Washington hit her on multiple occasions. M. Lightfoot expressed fear of L. Washington and wondered if she would be punished by L. Washington for talking to CPS. Eddington recommended terminating L. Washington's parental rights. L. Washington had not benefited from services offered in the past.

M. Lightfoot testified that she lived with her father and grandparents and had lived with L. Washington before last summer. When shown a picture of her forehead, she identified a scar and testified that she received the scar when L. Washington hit her in the head with a blow dryer. L. Washington told M. Lightfoot to lie and tell her father that a cousin hit her with a toy, which is what L. Washington and G. Lightfoot told the doctor at the hospital when she got a stitch. L. Washington did not say why she hit M. Lightfoot. L. Washington also hit M. Lightfoot with a mop, leaving a scar, with an extension cord, and with a belt. The scars on her back were from the buckle end of a belt. L. Washington hit her a lot and on different days. According to M. Lightfoot felt bad when L. Washington hit her and it left marks. L. Washington told M. Lightfoot not to tell anybody. M. Lightfoot testified that she wanted to live with her father because she did not get "whuppings" over there. M. Lightfoot testified that she was afraid of L. Washington and was too scared to live with her again.

L. Washington admitted that she disciplined M. Lightfoot with objects. She "whupped" her with a belt and popped her with a brush. "Popping" meant taking the brush and making

⁶ L. Washington was incarcerated from July 2009 to December 2009 for monetary fraud.

contact with M. Lightfoot's arm or wherever. That happened when L. Washington became frustrated when combing M. Lightfoot's hair. L. Washington denied that she "whipped" M. Lightfoot with an extension cord or a hair dryer; however, she admitted that she did "whup" M. Lightfoot with a belt. L. Washington testified that if her parental rights were not terminated, she would participate in a treatment plan and would do anything she was asked to do. She knew now not to put her hands on M. Lightfoot.

The trial court found that L. Washington had physically abused M. Lightfoot, that DHS established MCL 712A.19b(3)(b)(i), (l), (g), (j), and (k)(iii), and that termination of L. Washington's parental rights was in M. Lightfoot's best interests. L. Washington now appeals.

II. STATUTORY GROUNDS FOR TERMINATION

A. STANDARD OF REVIEW

L. Washington first argues that the trial court clearly erred in finding that the statutory grounds for termination were established by clear and convincing evidence. To terminate parental rights, the trial court must find that the DHS has proven at least one of the statutory grounds for termination by clear and convincing evidence.⁷ We review for clear error a trial court's decision terminating parental rights.⁸ A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made.⁹ We give regard to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it.¹⁰

B. ANALYSIS

L. Washington concedes that DHS established MCL 712A.19b(3)(l) because her parental rights to D. Washington were previously terminated. Therefore, this Court need not examine whether the trial court clearly erred in finding other grounds for termination.¹¹

Regardless, our review of the lower court record convinces us that the trial court did not clearly err in finding that DHS established MCL 712A.19b(3)(b)(i) and (j), where L. Washington physically abused M. Lightfoot on many occasions causing multiple injuries and numerous scars,

⁷ MCL 712A.19b(3); *In re Sours Minors*, 459 Mich 624, 632; 593 NW2d 520 (1999).

⁸ MCR 3.977(K); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); *In re Sours Minors*, 459 Mich at 633.

⁹ *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

¹⁰ MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

¹¹ See MCL 712A.19b(3) and *In re Sours Minors*, 459 Mich at 632 (providing that the trial court need only find that DHS has proven *one* of the statutory grounds by clear and convincing evidence to support termination the respondent's parental rights).

minimized her abuse of the child, and did not benefit from services offered to her twice before her parental rights to her older child were terminated.

Accordingly, we conclude that the trial court did not clearly err in finding that DHS established by clear and convincing evidence sufficient grounds for termination of L. Washington's parental rights.

III. BEST INTERESTS DETERMINATION

A. STANDARD OF REVIEW

L. Washington also argues that the trial court clearly erred in finding that termination of her parental rights was in M. Lightfoot's best interests. Once DHS has established a statutory ground for termination by clear and convincing evidence, if the trial court also finds from evidence on the whole record that termination is clearly in the child's best interests, then the trial court shall order termination of parental rights.¹² There is no specific burden on either party to present evidence of the children's best interests; rather, the trial court should weigh all evidence available.¹³ We review the trial court's decision regarding the child's best interests for clear error.¹⁴

B. ANALYSIS

L. Washington's history of abuse of M. Lightfoot's sibling, her physical abuse of M. Lightfoot, her minimization of her abusive conduct, and her failure to benefit from services constituted ample evidence to support the trial court's decision that termination was in M. Lightfoot's best interest. M. Lightfoot needed stability and support that L. Washington was unable to provide.

L. Washington also argues that the trial court should have granted G. Lightfoot sole physical custody and granted L. Washington supervised visitation. However, M. Lightfoot expressed that she feared her mother, making visitation more likely detrimental than beneficial. Further, evidence at the termination hearing regarding L. Washington's vulgar and threatening text messages to G. Lightfoot even after the trial court ordered her not to contact him, evidenced her anger issues, her inability to cooperate with G. Lightfoot and his family in the future, and her inability to follow court orders. Accordingly, we conclude that the trial court did not clearly err in finding that termination of L. Washington's parental rights was in M. Lightfoot's best interests.

¹² MCL 712A.19b(5); *In re Trejo Minors*, 462 Mich at 351.

¹³ *In re Trejo Minors*, 462 Mich at 353.

¹⁴ *Id.* at 356-357.

We affirm.

/s/ Kurtis T. Wilder
/s/ William C. Whitbeck
/s/ Karen M. Fort Hood